

# **A CITIZENS GUIDE FOR THE 2009 STORMWATER, SOIL EROSION, ILLICIT DISCHARGE AND CONNECTION ORDINANCE**

## **Why we have the ordinance?**

The City of Asheville has adopted this ordinance for the purpose of protecting the quality of life and to protect the integrity of the water shed.

The State of North Carolina has delegated authority to the City of Asheville to adopt this ordinance.

The ordinance governs erosion control and sedimentation, stormwater controls for both quality and quantity and illicit discharges. The objective of this ordinance is to control the amount of pollutants to the City's municipal separate storm sewer system.

There are a few exemptions from needing to obtain a grading and erosion control permit.

People and businesses participating in the following activities are exempt:

- Agriculture production
- Forest management and timber harvesting
- Mining activities covered under the State Mining Act of 1971
- Emergency actions to protect life and necessary firefighting activities
- Material stockpiling with adequate protection from off-site damage.
- Individual gravesites
- Existing lawns, gardens and horticultural activities disturbing less than 1 acre.

There are additional exemptions from the post construction stormwater control regulations. Refer to the ordinance for these exemptions.

The Stormwater Administrator is the Director of Public Works; however, the Directors duties may be carried out by his/her designee.

Any person conducting land disturbing activities must take all reasonable measures to prevent damage on public and private properties.

A checklist is available listing the requirements for grading and stormwater plans.

**Closeout:** For projects that require closeout documents, a preconstruction meeting will be held in which City staff will provide the necessary documents and specifications for closeout.

All closeout documents must be submitted and approved prior to a Certificate of Occupancy (C.O.) being issued.

**Erosion and Sediment:** The basic control objectives which are to be considered in developing and implementing an erosion and sedimentation control plan are to identify critical areas, limit time of exposure, limit exposed area, control surface water, control sedimentation and manage stormwater runoff.

**Undisturbed Buffers:** During construction, the inner most 2/3 of the buffer must remain undisturbed. The outer 1/3 of the buffer can have construction activities conducted within it but must be restored with native habitat immediately upon conclusion of construction activities.

Buffers are measured from the top of the stream bank and extend away from the stream. In areas where no defined top of bank exists, the buffer begins at the high water mark.

**Post Construction Buffers:** Post construction buffers are only enforced when a project is required to have a stormwater permit.

**Graded Slopes and Fills:** Slopes and fills must be in a condition to be retained in place by vegetation or other adequate erosion control device or structure. Temporary or permanent ground cover must be established within 14 days of the completion of any phase of construction on the above mentioned slopes. Benches are encouraged on slopes. The compaction of slopes is required to be 95% maximum density using the Standard Proctor method.

Severe slopes greater than a 2:1 (1 foot gain in elevation for every 2 feet of horizontal distance) must be designed by a professional engineer. For constructed slopes higher than 5 feet, an inspection and stability certification is required by a registered North Carolina professional with expertise in a related field.

No organic or degradable materials and no rock or masonry products larger than 12 inches are allowed in fill slopes. Materials that do not meet these requirements will be cause for a site to be regulated as a landfill by the NCDENR– Division of Waste Management.

**Stormwater Outlet Protection:** Stream banks and channels downstream from land disturbing activity need to be protected from damage that may be caused by accelerated erosion from an increased velocity of runoff water.

**Uncovered Areas:** Anyone conducting land disturbing activities is responsible for

installing sedimentation control devices. No areas where earth work has taken place should remain uncovered for more than 14 days from the time the work is completed or during a time when work is being conducted in a different area.

**Stormwater Quantity and Quality Control:** All development and redevelopment projects must meet the requirements of the Stormwater Best Management Practice (BMP) manual or be approved by the Stormwater Administrator.

**Stormwater BMP Manual:** This manual, prepared by the Stormwater Administrator, is intended to be used as a guideline for producing consistent BMP designs. It is not intended to replace engineering judgment or preclude the use of information not presented. The Stormwater Administrator may allow accepted engineering procedures not included in the BMP Manual at his/her discretion.

**Operation and Maintenance Agreement:** The applicant or owner is responsible for filing an "Operation and Maintenance Agreement" prior to a C.O. being issued. This form is available from the Stormwater Administrator's office.

The owner of the BMP measure is responsible for complying with the requirements of the Operation and Maintenance Agreement. If the owner fails to comply with the agreement, the City may perform the required inspection and repairs or maintenance as necessary and bill the owner 120% of the cost including labor and materials.

The Operation and Maintenance Agreement must be recorded with the Buncombe County Register of Deeds and be referenced on the plat or as-built. If the property is sold, the new owner will be obligated to meet the requirements of the agreement. The seller must include this information in the deed of conveyance, deed restrictions and protective covenants.

**Inspections:** The City will perform routine, random, complaint based, systematic inspections or a combination thereof to ensure compliance with the ordinance. Notice of the right to inspect will be included in the approval of each permit application.

The City has the right to investigate any site that it deems reasonably necessary, public or private, in order to assure compliance with the ordinance. It is unlawful for any owner or resident to obstruct a City employee who provides appropriate credentials, from performing his/her duty.

**Violations and Notices:** Any action that does not follow the approved plan, permit or any other requirement of the ordinance covered by this section will constitute a violation. Each day a violation continues shall constitute a new violation.

An immediate violation with penalties will be issued if it is determined by the office of the Stormwater Administrator to be necessary based on the table of penalties within the ordinance.

If it is determined that a Notice of Violation is necessary, that notice may be served

by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. The notice will be served to the financially responsible party. If the financially responsible party is not the owner, the notice will also be served to the property owner.

**Enforcement:** Soil erosion or sedimentation violations may carry a civil penalty up to \$5,000 per day. A violator may receive a penalty up to \$5,000 per day for each day the violation continues.

Illicit discharge and connection violations carry a maximum \$25,000 initial penalty and a \$10,000 per penalty for continuing violations.

Violators have a 30 day period beginning the day they receive the violation notice to either pay the penalty or appeal the violation to the Stormwater Administrator.

**Variances, Exceptions and Appeals:** Anyone may petition for a variance to use their own land provided their situation meets one of the following criteria:

- A. Unnecessary hardships would result from strict application of the ordinance.
- B. There are unusual circumstances surrounding the property.

Additional criteria are listed in the ordinance.

The Stormwater Administrator has the authority to approve plans that do not comply with the standards of the ordinance for work involving the creation of trails, walkways, river access areas and similar facilities along rivers, creeks and streams.

**Illicit Discharge and Connection:** It is illegal for anyone to connect any pipe, open channel or any other conveyance system that discharges anything except stormwater or unpolluted water into any streams, rivers or other water bodies.

It is illegal for anyone to throw, drain, run or discharge in any manner to any river, stream or other water body of the State of North Carolina or to cause, permit or allow anyone else to perform any of those actions.

**Accidental Discharge:** Contact the City of Asheville as soon as possible after an accidental discharge or spill. Contact with the City must occur within the first 24 hour period following the accidental discharge. You must report the type of spill, amount spilled and the time the spill took place. The immediate steps to prevent further discharge. To report a discharge call (828) 232-4567 Monday-Friday 8:30am–5:00pm.

## **General Overview**

**Stormwater Services**

Public Works Department  
McCray Coates, StormwaterManager  
Public Works Facility, 1st Floor  
P. O. Box 7148, Asheville, NC 28802  
8:30 a.m.-5 p.m., Monday-Friday  
Main Line: (828) 232-4567  
**[stormwater@ashevillenc.gov](mailto:stormwater@ashevillenc.gov)**